IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Banta Singh alias Balwant Rai
Vs.
State of Rajasthan
S.B. CR. REVISION PETITION NO.462/2006

Against order dated 05.01.2006 passed by Special Judge, NDPS Act Cases, Hanumangarh in Sessions Case No. 63/2005.

DATE OF ORDER :: 23rd November, 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. Bagrawat Singh for petitioner.
Mr. Vishnu Kachhawaha, Public Prosecutor.

BY THE COURT:

Accused petitioner Banta Singh alias Balwant Rai has filed the instant revision petition under Sec. 397 read with Sec.401 of the Cr.P.C. seeking quashment of the order dated 05.01.2006 passed by learned Special Judge, NDPS Act Cases, Hanumangarh in Sessions Case No. 63/2005 framing charge against him for the offence punishable under Sec. 8/15 of the NDPS Act.

Briefly stated, on an information received by Prithvi Singh, SHO Police Station Sangariya on 04.08.2005 about illegal transportation of poppy husk, after making entry in the Rojnamcha and sending information to the higher officers through constable Chhotu Ram, he started in Govt. jeep alongwith other police officials taking with them required articles for investigation. They took with them independent motbirs in the jeep in the way and after reaching at AMP canal Nukera miner, started there Nakabandi. At that time, a jeep bearing No.RJ-13C 1581 which was being driven by Banta Singh s/o Krishan Singh by caste Harijan, resident of Bhakarawali, came there, which was stopped, however, the accused seeing the police party got down from the jeep and started running. He could not be caught by the police at the spot. It is said that from the jeep, on checking, four gunny bags, each containing 40 kgs of poppy husk, total 160 kgs of poppy husk, were found. The police, after completion of investigation, filed chargesheet against the accused petitioner under Sec.8/15, NDPS Act and the learned trial Court framed the charge, as aforesaid. Hence, this revision petition challenging the order of framing charge.

The contention of learned counsel is that the learned trial Court has miserably failed to consider this aspect of the matter that in the FIR name of the accused has been shown as Banta Singh s/o Krishan, by caste Harijan, whereas present petitioner's name is Banta Singh alias Balwant Rai s/o Devilal and as he is not the person who ran away from the spot leaving the vehicle there from which the contraband material was recovered, he was entitled to be discharged. It has also been submitted that FIR as well as the other documents also show that the accused petitioner was not the same person, therefore, the trial Court committed serious illegality in framing charge against the accused petitioner.

On the other hand, the learned Public Prosecutor has submitted that in the instant case, statements of witnesses have been recorded and one of the witnesses viz. Indrajeet has stated that he knew the accused petitioner, and he was identified by him at the spot when at the time of staging Nakabandi, signal was given to stop the jeep but the accused fled away from the place of occurrence. It has

also been submitted that there is one more witness Hardayal, who also knew the accused petitioner from before. It is contended that at the time of investigation, this aspect of the matter was considered and infact the father of accused Devilal had expired and the mother of the accused thereafter became wife of the uncle of accused whose name was Krishan Rai. The contention, therefore, is that infact Banta Singh alias Balwant Rai s/o Devilal or s/o Krishan Rai is one and the same person, therefore, the trial Court has correctly framed the charge.

I have considered the submissions made before me and perused the FIR and other relevant documents.

It is correct that father's name of the accused has been shown different in the FIR but at the same time when in one of the statements recorded during the course of investigation and thereafter the witness examined in the Court clearly stated that accused was the same person, who ran away from the site, and further the investigation done in the matter also reveals that after death of Devilal the mother of accused petitioner became wife of his younger

brother Krishan Rai, therefore it is not proper for me to express any opinion on the merits of the case because the matter is pending for recording statements and it is a matter of evidence and that shall be taken care of at the time of final adjudication of the matter.

In view of the foregoing discussions, I do not find any merit in this revision petition and the same deserves to be dismissed.

Accordingly, the revision petition stands dismissed.

(SATYA PRAKASH PATHAK)J.

/jpa